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No automatic charge to import VAT for customs irregularity?

An ECJ advocate general has suggested that the customs duty due following an administrative offence should not be compounded with a charge to import VAT if, in the circumstances, release of the goods into free circulation within the EU can be excluded.

Bonded warehouse operators are liable for the customs duty potentially lost through store-keeping and other administrative irregularities hindering the exercise of proper control by the authorities. In principle, the goods are assumed to have been released into free circulation with the consequent liability to customs and other import duties including VAT. Two German bonded warehouse operators objected to the charge to import VAT on the grounds that there could be no loss of tax revenue by the nature of the offence. The first case concerned a delay of several months in deleting re-exported goods from the quantity stock (inventory) records and the second involved the failure to clear re-exported goods through the appropriate customs office at the point of exit from the country. In both cases, the consequence was that at any given moment, the book stock was more than the actual quantity physically present. This led to a customs duty charge on the deficit – assumed release of dutiable goods into free circulation – and to a charge to import VAT raised because the German import VAT basis follows the customs duty rules.

The advocate general on the two joined cases has suggested that the court side with the taxpayers by holding that import VAT becomes due in circumstances suggesting that the goods might have been released into free circulation at the moment they ceased to be subject to Customs supervision. In the present circumstances this was not the case as the irregularity had not occurred until after, or in connection with, the re-export. Thus, the breach of regulations had not endangered the collection of VAT otherwise due.

The ECJ case references are C-226/14 *Eurogate* (delayed recording) and C-226/14 *DHL Hub Leipzig* (customs clearance failure) joint opinion of January 12, 2016.

Keywords

import VAT, irregularities